



West Midlands
Interchange

Four Ashes Ltd

Dated: 2018

- (1) SOUTH STAFFORDSHIRE DISTRICT COUNCIL
- (2) STAFFORDSHIRE COUNTY COUNCIL
- (3) PIERS ALASTAIR CARLOS MONCKTON
- (4) FOUR ASHES LIMITED

DEVELOPMENT CONSENT OBLIGATION

DRAFT 4 – 11 December 2018

Working draft

made pursuant to section 106 of the Town and Country Planning Act 1990
(as amended) relating to The West Midlands Rail Freight Interchange at land
west of Junction 12 of the M6 in southern Staffordshire

BETWEEN

- (1) SOUTH STAFFORDSHIRE DISTRICT COUNCIL of Wolverhampton Road, Codsall, South Staffordshire WV8 1PX (the "**District Council**")
- (2) STAFFORDSHIRE COUNTY COUNCIL of 1 Staffordshire Place, Stafford, ST16 2DH (the "**County Council**")
- (3) PIERS ALASTAIR CARLOS MONCKTON of Stretton Hall, Stretton, Stafford (the "**Owner**")
- (4) FOUR ASHES LIMITED (Company Registration Number 09747871) whose registered office is at 4th Floor 7/10 Chandos Street, Cavendish Square, London, W1G 9DQ (the "**Developer**")

[Parties to be expanded to include owners of all land shaded pink on Plan A]

BACKGROUND

- (A) The Developer submitted the Application to obtain authorisation for the Development in the form of the DCO and the Application was accepted by the Planning Inspectorate under section 55 of the 2008 Act on 24 August 2018.
- (B) The Owner is the registered proprietor of the Obligation Land with titles absolute under Title Numbers SF527080, SF527160, SF527181, SF527218, SF527224, SF527265, SF528120, SF528668, SF528704, SF550576 and SF609620. **[To be expanded to cover titles of all land shaded pink on Plan A]**
- (C) The Developer has the benefit of an option to acquire the Obligation Land and intends to construct and operate the Development as authorised by the DCO.
- (D) The Owner and the Developer have entered into this Agreement in order to ensure that the Development is regulated by the obligations herein contained which obligations are development consent obligations for the purposes of Section 106 of the 1990 Act.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATIONS

1.1 For the purposes of this Agreement (including for the avoidance of doubt the recitals above) the following expressions shall have the following meanings:

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| "1990 Act" | the Town and Country Planning Act 1990 (as amended) |
| "2008 Act" | the Planning Act 2008 (as amended) |
| "Application" | the application made pursuant to section 37 of the 2008 Act for the DCO to authorise the Development |
| "Bespoke Noise Insulation Scheme" | a scheme for the provision of noise insulation for some properties impacted upon by the Development contained in Schedule 7 |
| "Brokerage Co-ordinator" | a person (with administrative support) responsible for furthering the objectives of the Brokerage System as set out in section 5 of the Employment, Skills and Training Plan Framework |
| "Brokerage Co-ordinator Payment" | the sum of £86,000 per annum Index Linked to fund the post of Brokerage Co-ordinator and administrative support for the Brokerage Co-Ordinator payable in accordance with paragraph 6 of Schedule 3 |
| "Bus Services Subsidy Cap" | the sum of one million and ninety thousand pounds (£1,090,000.00) Index Linked to be applied towards the provision of bus services to service the Development |
| "CEF Occupation Payment" | means the sum derived from multiplying £2.10 by the number of square metres (GIA) of the Warehouse to which the payment relates |

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| "CIL" | the charge created pursuant to Section 205 of the 2008 Act and Regulation 3 of the CIL Regulations |
| "CIL Regulations" | the Community Infrastructure Levy Regulations 2010 (as amended) |
| "Community Fund" | the sum of one hundred thousand pounds (£100,000.00) Index Linked to be applied to the Community Purposes listed in Schedule 6 or any other purpose first agreed with the Developer for the mitigation of any impacts arising from the Development |
| "Community Liaison Group" | <p>a group to which representatives of the following are to be invited pursuant to paragraphs 4.1 and 4.2 of Schedule 0</p> <ul style="list-style-type: none"> • the Developer • the Owner • the SWTPC • the Rail Freight Co-ordinator • the District Council • the County Council • Penkridge Parish Council • Brewood and Coven Parish Council • Network Rail |
| "Community Parks" | the Calf Heath Community Park and the Croft Lane Community Park as shown on the Green Infrastructure Parameters Plan (Document 2.7 attached hereto) |
| "Community Purposes" | the purposes set out in Schedule 6 |

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| “Contingent Traffic Management Fund” | the sum of two hundred and seventy five thousand (£275,000.00) Index Linked administered by the Transport Steering Group |
| “Councils” | the District Council and the County Council or either of them as the case may be |
| “DCO” | the development consent order to be made under the 2008 Act pursuant to the Application currently titled The West Midlands Rail Freight Interchange Order 201X |
| “Development” | the works described in Schedule 1 of the DCO |
| “Ecological Monitoring Fee” | the sum of fifteen thousand pounds (£15,000) payable as provided for in paragraph 9 of Schedule 2 to be used for the monitoring of the implementation of the ecological mitigation and management plans approved for the Development |
| “EF Construction Payment” | means the sum derived from multiplying £0.46 by the number of square metres (GIA) of the Warehouse to which the payment relates |
| “EF Occupation Payment” | means the sum derived from multiplying £1.83 by the number of square metres (GIA) of the Warehouse to which the payment relates |
| “Employment, Skills and Training Plan Framework” | the plan titled “Employment Skills Training Plan” included in Schedule 11 to this Deed or, subject to paragraph 11 of Schedule 3, as modified from time to time by agreement between the Owner the County Council and the District Council |
| “Employment Fund Steering Group” | the steering group to be responsible for directing the spending of the Employment Fund |

as described in section [4] of the Employment Skills Training Plan Framework

“Estate Management Company”

the management company to be established for the management and maintenance of the Green Infrastructure

“Estate Management Plan”

the plan to be submitted to and approved by the District Council detailing and securing the long term management and maintenance of the Green Infrastructure by the Estate Management Company

“Green Infrastructure”

the green infrastructure shown on the Green Infrastructure Parameters Plan (Document 2.7 attached hereto) in green colouring or as otherwise agreed with the District Council including the Community Parks but excluding any landscaping within development plot demises

“Implementation”

the implementation of the Development by the carrying out of any material operation within the meaning of sections 56(2) and (4) of the 1990 Act provided that the carrying out of demolition of existing buildings and structures, termination or diversion of existing services or temporary diversion of highways, temporary construction, site preparation (including ecological mitigation and translocation of species), investigation works, archaeological investigations, environmental site investigations, decontamination works, or works and operations to enable any of the foregoing to take place shall not constitute a material operation and consequently shall not individually or together constitute implementation for the purposes of this definition or this Agreement and

"Implemented" "Implement" and cognate expressions shall be construed accordingly

"Index"

the All Items Retail Prices Index as published by the Office of National Statistics to include any applicable local or regional weighting or in the event of the RPI Index ceasing to exist an alternative index agreed between the parties

"Index-Linked"

the adjustment of the sums referred to in this Agreement by Indexing from the date hereof to the date of payment

"Indexing"

the sum concerned shall be linked to the Index such that any sum or financial contribution which is so linked in this Agreement shall be increased or decreased by reference to the Index calculated from the date hereof to the date of payment

"Initial Employment Fund"

the sum of one million seven hundred thousand (£1,7000,000.00) Index Linked administered by the Employment Fund Steering Group

"Interest"

interest at two per cent per annum above the base lending rate of the Bank of England from time to time

"Obligation Land"

the land edged red on Plan A

"Occupy"

occupation of Warehouses other than for the purposes of construction fitting out commissioning or site security and **"Occupation"** **"Occupying"** **"Occupied"** and **"Occupier"** and cognate expressions shall be construed accordingly

"Occupier ESTP"

an employment skills and training plan identifying the individual commitments of each occupier of a Qualifying Building which shall be

in accordance with the framework set by the Employment Skills and Training Plan Framework

“Order Limits”

has the meaning given to it in the DCO

“Permissive Paths”

the paths to be provided within the Order Land indicated on the Access and Rights of Way Plans (Document 2.3) (as defined in the DCO) as permissive paths

“Plan A”

the plan marked A attached to this Agreement

“Plan B”

the plan marked B attached to this Agreement

“Qualifying Building”

a Warehouse and the Rail Freight Terminal Building authorised by the DCO

“Rail Freight Co-ordinator”

the person responsible for identifying and implementing measures for the marketing and promotion of the rail freight terminal to warehouse occupiers on and off the site whose duties shall also include liaising with the District Council regarding the progress of construction of the Rail Terminal Preparatory Works and Rail Terminal Works and participation in meetings of the Community Liaison Group

“Rail Freight Terminal Building”

the building referred in Works No 2 in Schedule 1 of the DCO as a rail freight terminal gateway/office

“Rail Terminal”

the rail terminal constructed through the implementation of the Rail Terminal Works

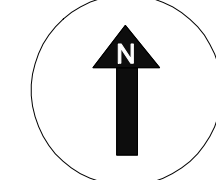
“Rail Terminal Preparatory Work”

the work streams set out in Schedule 8

“Rail Terminal Works”

the works shown illustratively on the Rail Terminal Illustrative Phase 1 Layout Plan (Document 2.15A) being a rail terminal capable of handling at least four trains a day

Notes:



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Title:

Plan B

Scale:
1:4,000@A0

Date:
03/09/2018

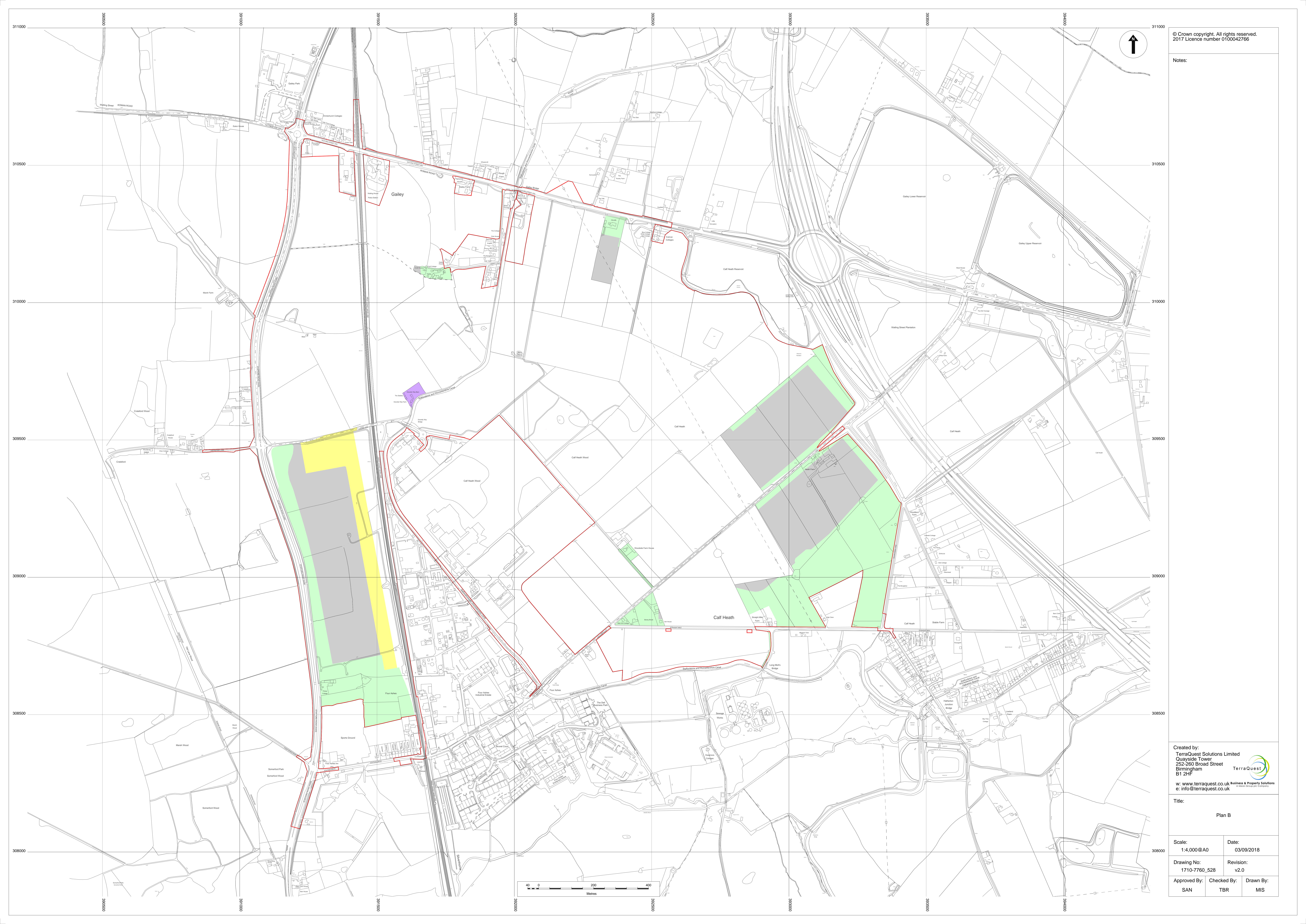
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Revision:
v2.0

Approved By:
SAN

Checked By:
TBR

Drawn By:
MIS



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|---|---|
| “Shuttle Bus Cap” | the sum of one million six hundred thousand pounds (£1,600,000.00) Index Linked for the provision of the Shuttle Bus Services |
| “Shuttle Bus Services” | the service of Shuttle Buses to serve the Development as set out in the Site Wide Travel Plan |
| “Site Wide HGV Management Plan” | the Site Wide HGV Management Plan contained in Schedule 10 or as amended by agreement for time to time as provided for therein |
| “Site Wide Travel Plan (SWTP)” | the Site Wide Travel Plan contained in Schedule 9 or as amended by agreement for time to time as provided for therein |
| “Site Wide Travel Plan Co-ordinator (SWTPC)” | the person appointed by the Developer to administer the Site Wide Travel Plan |
| “Steering Groups” | the Employment Fund Steering Group and the Transport Steering Group |
| “Tier One Contractor” | a main contractor working on the site who is directly contracted to the developer |
| “Tier One Contractor ESTP” | an employment skills and training plan identifying the individual commitments of the Tier one Contractor which shall be in accordance with the framework set by the Employment Skills and Training Plan Framework |
| “Transport Steering Group” | the group of that name to be constituted under the provisions of the Site Wide Travel Plan |
| “Travel Plan Contingency Fund” | the sum of two hundred and seventy five thousand (£275,000.00) Index Linked administered by the Transport Steering Group |
| “Travel Plan Sum” | the sum of Eleven Thousand Pounds (£11,000.00) Index Linked administered by the Transport Working Group |

**“Warehouses” or
Warehousing”**

the buildings erected pursuant to the DCO for use as warehousing

**“WMI Employment
Partnership”**

a partnership including local public private and education sector representatives as set out in the Employment and Skills Training Plan Framework

- 1.2 This Agreement shall be interpreted in accordance with the following:
- 1.2.1 the headings appearing in this Agreement are for reference only and shall not affect the construction of this Agreement;
 - 1.2.2 unless the context requires otherwise reference in this Agreement to clauses, sub-clauses, paragraphs, recitals, sub-paragraphs and schedules and references to those contained in this Agreement and references to plans and drawings are references to plans and drawings annexed to this Agreement;
 - 1.2.3 the words “including” shall mean “including without limitation or prejudice to the generality of any description defining term or phrase preceding the word” and the word “include” and its derivatives shall be construed accordingly;
 - 1.2.4 references in this Agreement to statutes, bye-laws, regulations, orders and delegated legislation shall include any statute, bye-law, regulation, order or delegated amending, re-enacting or made pursuant to the same;
 - 1.2.5 in this Agreement the expressions “the District Council” and “the County Council” shall include their respective statutory successors in respect of the functions to which this Agreement relates and the expressions “the Owner” and “the Developer” shall include successors in title to the Obligation Land;
 - 1.2.6 any obligations of the parties to this Agreement contained in this Agreement which are or may be deemed to be obligations of one or more persons shall be joint and several obligations on the part of those persons unless the context otherwise requires;

- 1.2.7 any obligations by the Owner and/or the Developer not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person and any obligation by the Owner and/or Developer to do an act or thing may be deemed to include an obligation to procure that the act or thing is done;
- 1.2.8 if any provision in this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be deemed thereby to be affected, impaired or called into question;
- 1.2.9 the Interpretation Act 1978 shall apply to this Agreement.

2. STATUTORY POWERS, ENFORCEMENT AND LIABILITY

- 2.1 This Agreement is made pursuant to Section 106 of the 1990 Act as amended by Section 174 of the 2008 Act and the obligations in this Agreement constitute development consent obligations for the purposes of Section 106 of the 1990 Act and planning obligations pursuant to Section 106(4) of the 1990 Act and are enforceable by the Councils as provided in clause 2.2.
- 2.2 The obligations set out in Schedule 1 are enforceable by the District Council and the obligations in Schedule 2 are enforceable by the County Council.
- 2.3 It is hereby agreed that subject to clause 2.4 the Owner enters into this Agreement with the effect of binding the Obligation Land and the Developer enters into this Agreement to bind any interest resulting from the agreement it entered into with the Owner referred to in recital (C) however the Developer shall not be bound by the obligations herein unless and until it acquires a legal interest in the Obligation Land being more than an option or conditional contract and then it shall be liable only in respect of such part of the Obligation Land as it has acquired.
- 2.4 Obligations to perform or carry out works or activities on any part of the Obligation Land shall only be enforceable against the persons with an interest in the part of the Obligation Land to which that obligation relates.

3. **COMMENCEMENT**

3.1 [With the exception of paragraphs [] of Schedule 1 and paragraphs [] of Schedule 2] the obligations contained in clause 6 and Schedules 1 and 2 of this Agreement shall not have effect unless and until both:

3.1.1 the DCO has been made; and

3.1.2 the Development has been Implemented.

4. **FURTHER PLANNING PERMISSIONS AND DEVELOPMENT CONSENTS**

4.1 Nothing in this Agreement shall prohibit or limit or affect in any way the right to develop any part of the Obligation Land in accordance with a planning permission issued pursuant to the 1990 Act or a Development Consent Order or any other statutory authority other than the DCO as defined herein granted or issued (whether or not on appeal or by any other means) either before or after the date of this Agreement.

5. **PROVISIONS FOR RELEASE**

5.1 This Agreement shall cease and determine if the DCO is quashed, cancelled, revoked or expires prior to Implementation except to the extent that any obligation in this Agreement has been performed in whole or in part.

6. **COVENANTS BY THE OWNER**

6.1 The Owner and, subject to clause 2.3, also the Developer jointly and severally covenant:

6.1.1 to perform and comply with the development consent obligations contained in Schedules 1,2 and 3; and

6.1.2 not to allow any access for the purposes of carrying out the Development through the Obligation Land to the Yellow Land, the Green Land , the Grey Land, and the Purple Land until the relevant persons with interest in that land have entered into obligations with the District Council and/or the County Council as appropriate pursuant to s.106 of the Town and Country Planning Act 1990 to comply with the following obligations in this Agreement in so far as they apply to that land:

- 6.1.2.1 in respect of the Yellow Land the obligations in [Delivery of Rail Terminal];
- 6.1.2.2 in respect of the Green Land the obligations in [Green Infrastructure and Permissive Paths];
- 6.1.2.3 in respect of the Grey Land the obligations in [Occupier ESTP]; and
- 6.1.2.4 in respect of the Purple Land the obligations in [Employment Office];.

7. COVENANTS BY THE DISTRICT COUNCIL AND THE COUNTY COUNCIL

- 7.1 The District Council covenants with the Owner as set out in Schedule 4.
- 7.2 The County Council covenants with the Owner as set out in Schedule 5.

8. SUCCESSORS IN TITLE

- 8.1 This Agreement shall be enforceable against the Developer (subject to clauses 2.3 and 2.4) and the Owner and their successors in title and those deriving title under them in respect of the Obligation Land.
- 8.2 No party shall be liable for any breach of the obligations contained herein after it shall have parted with its entire interest in the Obligation Land or the relevant part thereof but without prejudice to any rights of the Councils in respect of any antecedent breach.

9. THIRD PARTIES

- 9.1 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1990 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

10. SERVICE OF NOTICES

- 10.1 All notices requests demands or other written communications to be sent or given pursuant to the provisions of this Agreement shall be deemed to have been properly given or made if despatched by first class letter to the party to which

such notice request demand or other written communication is to be given or made under this Agreement and addressed as follows:

10.1.1 if to the District Council to the address set out above and marked for the attention of the Development Control Manager;

10.1.2 if to the County Council to the address set out above and marked for the attention of the Director of Environment and Transport (or nominee or appropriate County Council officer taking responsibility for the highway and local/public transport function);

10.1.3 if to the Owner to the address set out above; and

10.1.4 if to the Developer to the address set out above.

11. **COMMUNITY INFRASTRUCTURE LEVY**

11.1 If after the date of this Agreement a CIL is introduced which is applicable to the Development then the parties hereto will use reasonable endeavours to agree variations to this Agreement with the intention that the Owner should not be in a position where it is in a financially worse position because of CIL in respect of the obligations contained in Schedules 0, 2 and Schedule 3 than they would be if they performed the obligations in this Agreement and CIL did not apply.

12. **LOCAL LAND CHARGES**

12.1 This Agreement shall be registered as a Local Land Charge.

13. **INTEREST**

13.1 If any payment under this Agreement is due but remains unpaid for a period exceeding fourteen days the payer shall pay on demand to the payee Interest from the date payment is due to the date of payment.

14. **WAIVER**

14.1 No waiver (whether express or implied) by any of the Councils of any breach or default by the Owner in performing or observing any of the covenants undertakings obligations or restrictions contained in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Councils from enforcing any of the said covenants undertakings obligations or restrictions or from acting upon any subsequent breach or default in respect thereof by the Owner.

15. **VERIFICATION AND ENFORCEMENT**

15.1 The Owner shall permit the Councils and their authorised employees and agents upon reasonable notice to enter the Obligation Land at all reasonable times and for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed.

16. **VOID PROVISIONS**

16.1 If any individual clause or paragraph in this Agreement is subsequently held to be unenforceable by a court the parties agree that the offending clause or paragraph shall cease to be binding and will be severed from the Agreement and the severing of such clause or paragraph shall not affect the continuing enforceability of the remainder of the Agreement.

17. **NO FETTER OF DISCRETION**

17.1 Nothing herein contained or implied shall prejudice or affect the rights discretions powers duties and obligations of the Councils under all statutes bye-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

18. **GENERAL REQUIREMENT TO CO-OPERATE AND APPROVALS**

18.1 The parties hereto shall act in good faith and shall each cooperate with each other to facilitate the discharge and performance of the obligations of the other contained within this Agreement within the timescale specified.

18.2 Where a party is required to make a request give confirmation approval or consent express satisfaction with agree to vary or to give notice of any matter such confirmation approval consent express satisfaction with agreement to vary or notice shall be deemed not to have been given unless given or expressed in writing and shall not be unreasonably withheld or delayed.

19. **DISPUTE RESOLUTION**

19.1 Save for a dispute arising

19.1.1 between the members of the Transport Steering Group, which shall be determined in accordance with the dispute resolution provisions detailed in section 7 of the Site Wide Travel Plan; or

19.1.2 between the members of the Employment Fund Steering Group, which shall be determined in accordance with the dispute resolution provisions detailed in section 6 of the Employment, Skills and Training Plan Framework; or

19.1.3 a dispute in relation to matters contained in Schedule 7 relating to the Bespoke Noise Insulation Scheme which shall be determined as provided for in the Bespoke Noise Insulation Scheme,

in the event of any dispute or difference arising between the parties hereto touching or concerning any matter or thing arising out of this Deed (other than a dispute or difference touching or concerning the meaning or construction of this Deed) such dispute or difference shall be referred to some independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications and such person shall act as an expert and his decision shall be final and binding on the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.

19.2 In the absence of agreement between the parties to the dispute or difference as to the professional qualifications of the person to be appointed pursuant to clause 19.1 or as to the appropriate professional body within fourteen days after any party has given to the other parties to the disputes or difference a written request to concur in the professional qualifications of the person to be appointed pursuant to clause 19.1 then the question of the appropriate qualification or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute or difference and such solicitor shall act as an expert and his decision as to the professional qualifications of such person or as to the appropriate professional body shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute or difference and his cost shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination and shall be borne by the parties to the dispute or difference in equal shares.

20. **NOTIFICATION OF TRIGGERS**

20.1 The Owner shall notify the District Council and County Council of the following events:

20.1.1 Implementation of the Development;

20.1.2 First Occupation of the first building comprising the Development to be Occupied;

20.1.3 Occupation of the first 47,000 sq.m. of Warehousing to be Occupied;
and

20.1.4 Occupation of the first 187,000 sq.m. of Warehousing to be Occupied

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SCHEDULE 1

COVENANTS WITH THE DISTRICT COUNCIL

The Owner and, subject to clause 2.3, the Developer covenant with the District Council as follows:

1. Rail Infrastructure

1.1 To commence the Rail Terminal Preparatory Work at the same time as proceeding with the first phase of the Development

1.2 Subject to paragraph 1.3 of this Schedule to complete the Rail Terminal Works prior to the earliest of:

1.2.1 the Occupation of more than 187,000 sq.m. of Warehousing; or

1.2.2 the eighth anniversary of the first Occupation of more than 47,000 sq.m. of Warehousing

unless otherwise agreed by the District Council

1.3 If the completion of the Rail Terminal Works is delayed and cannot be achieved by the earliest of the events referred to paragraphs 1.2.1 and 1.2.2 due to matters agreed with the District Council as being outside the control of the Owner then the obligation in paragraph 1.2 shall no longer apply and instead the Owner must complete the Rail Terminal Works as soon as reasonably practicable following the date of the earliest of the events referred to paragraphs 1.2.1 and 1.2.2.

1.4 To retain, manage and keep available for use the rail terminal constructed as a result of the Rail Terminal Works unless otherwise agreed by the District Council

2. Rail Support

2.1 To appoint a Rail Freight Co-ordinator prior to Implementation who shall report to the District no less than once a quarter on:

2.1.1 the progress of the Rail Terminal Preparatory Works;

2.1.2 the progress of the Rail Terminal Works; and

2.1.3 the operation of the Rail Terminal when open including:

- 2.1.3.1 the appointment of a rail operator to operate the Rail Terminal;
 - 2.1.3.2 the amount of rail freight usage of the Rail Terminal;
 - 2.1.3.3 the number of trains using the Rail Terminal; and
 - 2.1.3.4 the Warehousing receiving or sending goods through the Rail Terminal;
 - 2.1.3.5 the amount of goods being received or sent through the Rail terminal by freight handlers not occupying the Warehousing.
- 2.2 To maintain a person in the position of Rail Freight Co-ordinator throughout the life of the Development unless otherwise agreed by the District Council
- 3. **Green Infrastructure**
- 3.1 To submit the Memorandum and Articles of Association of the Estate Management Company and the Estate Management Plan to the District Council and to obtain its approval thereof prior to the Occupation of any Warehousing.
- 3.2 To procure that the Green Infrastructure is maintained by the Estate Management Company in accordance with the Estate Management Plan (or any approved variation thereto).
- 4. **Community Liaison Group**
- 4.1 To establish the Community Liaison Group in order to facilitate liaison between local residents local authorities and other interested stakeholders in relation to the construction and operation of the Development prior to Implementation.
- 4.2 To administer the calling of meetings of the Community Liaison Group not less than one every quarter following the Implementation of the Development and on additional occasions if reasonably requested by any member of the Group so to do.
- 5. **Community Fund**
- 5.1 To make payment to the District Council of the Community Fund as follows:

5.1.1 50% within 28 days of the Occupation of the first Warehouse to be Occupied

5.1.2 50% within 28 days of the fifth anniversary of the date of Occupation of the first Warehouse to be Occupied

6. **Noise Insulation**

6.1 To implement and observe the provisions of the Bespoke Noise Insulation Scheme

7. **Notification**

7.1 To notify the District Council of the date of any of the following threshold events when they have been reached:

7.1.1 Implementation of the Development

7.1.2 Occupation of the first Warehouse to be Occupied

7.1.3 Occupation of 47,000 sq.m. of Warehousing

7.1.4 Occupation of 187,000 sq.m. of Warehousing

SCHEDULE 2

COVENANTS WITH THE COUNTY COUNCIL

The Owner and, subject to clause 2.3, the Developer, covenant with the County Council as follows:

1. **Travel Plan Sum**

1.1 To pay the Travel Plan Sum to the County Council prior to the Occupation of any Warehousing

2. **Site Wide Travel Plan and Site Wide HGV Management Plan**

2.1 To observe and perform the provisions of the Site Wide Travel Plan at all times following Implementation

2.2 To observe and perform the provisions of the Site Wide HGV Management Plan at all times following Implementation

3. **Transport Steering Group**

3.1 To establish the Transport Steering Group prior to Implementation and to participate in the discharge of the responsibilities of the Transport Steering Group in accordance with the provisions of the Site Wide Travel Plan until the expiry of five years from full Occupation of the Qualifying Buildings or earlier if agreed by the Transport Steering Group.

4. **Site Wide Transport Co-ordinator**

4.1 To appoint a Site Wide Transport Co-ordinator prior to Implementation to carry out the duties of that post set out in the Site Wide Travel Plan

5. **Travel Plan Contingency Fund**

5.1 The Travel Plan Contingency Fund shall be available to be drawn down by the Transport Steering Group in accordance with the provisions of the Site Wide Travel Plan as follows:

5.1.1 25% to be available following the fourth anniversary of Implementation;

5.1.2 25% to be available following the eight anniversary of Implementation;

5.1.3 25% to be available following the twelfth anniversary of Implementation; and

5.1.4 the balance to be available following the fifteenth anniversary of Implementation.

5.2 Any obligation to make monies available to the Transport Steering Group pursuant to paragraph 5.1 shall cease upon the twentieth anniversary of Implementation.

6. Contingent Traffic Management Fund

6.1 The Contingent Traffic Management Fund shall be available to be draw down by the Transport Steering group in accordance with the provisions of the Site Wide Travel Plan following the Occupation of 187,000 sq.m. of Warehousing.

6.2 Any obligation to make monies available to the Transport Steering Group pursuant to paragraph 6.1 shall cease upon the fifteenth anniversary of Implementation.

7. Bus Services and Shuttle Bus Services

7.1 To procure the increase in frequency of bus service 54 or an alternative bus service to serve the Development by subsidising the services if necessary and as required to do so by the Transport Steering Group such subsidy not to exceed the Bus Services Subsidy Cap.

7.2 To provide the Shuttle Bus Services as required to do so by the Transport Steering Group provided that the cost of such provision shall not exceed the Shuttle Bus Cap.

8. Permissive Paths

8.1 To submit a scheme for the provision of the Permissive Paths contained in any phase of the Development to the County Council and obtain approval thereof prior to the commencement of construction of that phase which schemes shall:

8.1.1 set out the specification of the relevant Permissive Paths and timing of their provision;

8.1.2 confirm the arrangements for ongoing maintenance of the relevant Permissive Paths;

8.1.3 ensure public access to the relevant Permissive Paths at all times save for emergency closures; and

- 8.1.4 make provision for the alteration to or replacement of the relevant Permissive Paths subject to the provision of suitable alternative arrangements acceptable to the County Council.
- 8.2 To comply with provisions of the schemes approved pursuant to paragraph 8.1 above.
9. **Ecological Monitoring Fee**
- 9.1 To pay the Ecological Monitoring Fee to the County Council for the monitoring of the implementation of the ecological mitigation and management plans for the development approved pursuant to Requirement [11] of Schedule 2 of the DCO (or the equivalent requirement in the DCO approved by the Secretary of State) upon Implementation and on the fourth and eighth anniversary of Implementation which, for the avoidance of doubt, shall comprise three payments in total

SCHEDULE 3

COVENANTS WITH THE DISTRICT COUNCIL AND COUNTY COUNCIL

The Owner and, subject to clause 2.3, the Developer, covenant with the District Council and County Council, unless otherwise agreed in writing, as follows:

Employment

1. To comply with and fully implement the Employment, Skills and Training Plan Framework
2. To submit a Tier One Contractor ESTP to the District Council and County Council for approval in respect of each Tier One Contractor and to obtain approval thereof from the District Council and County Council prior to the commencement of work by that contractor and thereafter comply with its provisions
3. To submit an Occupier ESTP to the District Council and County Council for approval in respect of each Warehouse and to obtain approval thereof from the District Council and County Council prior to the Occupation of the Warehouse to which it relates and thereafter comply with its provisions.
4. To pay the Initial Employment Fund to the County Council as follows:
 - (i) the EF Construction Payment in respect of each Warehouse prior to the commencement of construction of that Warehouse; and

- (ii) the EF Occupation Payment in respect of each Warehouse prior to the Occupation of that Warehouse
- 5. To pay the CEF Occupation Payment to the County Council, if payable in respect of any Warehouse under the provisions of paragraphs 6.7 to 6.19 (or any equivalent paragraphs in any amended Employment, Skills and Training Plan Framework) within 28 days of the obligation for such payment to be made being established under the aforesaid provisions of the Employment, Skills and Training Plan Framework
- 6. To set up the Employment Fund Steering Group six months prior to the anticipated first Occupation of a Warehouse and to operate that Group in accordance with paragraphs 6.20 to 6.28 of the Employment Skills Training Plan Framework (or any equivalent paragraphs in any amended Employment, Skills and Training Plan Framework)
- 7. To pay a Brokerage Co-Ordinator Payment to the County Council as follows:
 - (i) payment of £86,000 Index Linked on the date that the first Tier One Contractor is appointed or prior to six months prior to Implementation , whichever is the later date;
 - (ii) payment of £86,000 Index Linked and on each anniversary of the payment made pursuant to (i) above for a period of fifteen years (which, for the avoidance of doubt, shall comprise fifteen payments and a maximum payment of £1.290,000.00 in total) or until the first Occupation of the final Warehouse to be Occupied, whichever is the later
 - (iii) in the event of construction and Occupation of the Warehouses is significantly faster than envisaged at the time of completing this Deed payment can be brought forward if the parties agree through the Employment Fund Steering Group as provided for in the Employment Skills Training Plan Framework
- 8. Prior to Implementation to agree with the District Council the members and constitution of the WMI Employment Partnership and thereafter to promote through that Partnership a multi-sector, joined up approach to training, curriculum and recruitment.
- 9. To provide a room and welfare facilities within the Estate Management Office to be provided as part of the Development for use by Occupiers as a venue for training and recruiting such facility to be available prior to the first Occupation of

a Warehouse and retained for the lifetime of the Development unless otherwise agreed with the District Council.

10. Where a conflict arises between the obligations contained in this Schedule and the obligations in the Employment Skills Training Plan Framework then the provisions of this Schedule shall prevail.
11. Variations to the any of contents and obligations of the Employment Skills Training Plan Framework may be agreed between the Owner, the District Council and the County Council with the exception only of obligations which are also contained the variation of which is governed by the provisions of this Deed and/or the statutory provisions relating to the variation of s.106 obligations.

SCHEDULE 4

DISTRICT COUNCIL'S OBLIGATIONS

The District Council covenants with the Owner as follows:

1. **Use of Monies and Repayment**
 - 1.1 To use [Employment] [Dependant on who Employment monies paid to]
 - 1.2 To use the Community Fund for the Community Purposes or another purpose first agreed with the Owner;
 - 1.3 To return any monies that have not been spent or are not contractually committed for the purposes for which they have been within a period of five years from receipt of the monies to the party who paid the monies along with Interest accrued thereon within 28 days of the expiry of the aforesaid five year period in respect of which time shall be of the essence.
2. **Discharge of Developer Obligations**
 - 2.1 Upon reasonable written request from the Owner the District Council will certify compliance or partial compliance with the provisions of this Agreement.
3. **Noise Insulation Scheme**
 - 3.1 To comply with any actions required of the Council under the provisions of the Bespoke Noise Insulation Scheme

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SCHEDULE 5

COUNTY COUNCIL'S OBLIGATIONS

The County Council covenants with the Owner as follows:

1. Use of Monies

- 1.1 To use the Travel Plan Sum for the purpose of monitoring compliance with the Site Wide Travel Plan, attendance at meetings of the Steering Groups and other related activities associated with the Development
- 1.2 To use each Ecological Monitoring Fee for the monitoring of the implementation of the ecological mitigation and management plans for the development approved pursuant to Requirement [11] of Schedule 2 of the DCO (or the equivalent requirement in the DCO approved by the Secretary of State)
- 1.3 To use the Brokerage Coordinator Fund solely for the purpose of paying the salary and on-costs of the Brokerage Coordinator and administrative support
- 1.4 To use all the EF Construction Payments, EF Occupation Payments and CF Occupation Payments solely for the purpose of initiatives to support activities to encourage local people to obtain employment within the Development

1.5

2. Refund of Unexpended Monies

- 2.1 Save as provided for in paragraphs 2.2 and 2.3 below to return any monies that have not been spent or are not contractually committed for the purposes for which they have been within a period of five years from receipt of the monies to the party who paid the monies along with Interest within 28 days of the expiry of the aforesaid five year period in respect of which time shall be of the essence.
- 2.2 Any part of the Brokerage Coordinator Payment which has not been applied for the purposes set out in paragraph 1.3 above within fifteen months of the last payment shall be returned to the party who paid the monies along with Interest within 28 days of the expiry of the aforesaid fifteen month period in respect of which time shall be of the essence.
- 2.3 Any part of the EF Construction Payments, EF Occupation Payments and CF Occupation Payments which have not been applied for the purposes set out in

paragraph 1.4 above within twelve months of their payment shall be returned to the party who paid the monies along with Interest within 28 days of the expiry of the aforesaid twelve month period in respect of which time shall be of the essence.

2.4

3. **Discharge of Developer Obligations**

3.1 Upon reasonable written request from the Owner and subject to its reasonable and proper professional costs and charges the County Council will certify compliance or partial compliance with the provisions of this Agreement.

SCHEDULE 6

Community Fund Purposes

- Schemes to enhance the public realm in the vicinity of the Development
- Initiatives to maximise the use of the Community Parks by members of the public
- Provisions to facilitate engagement between the occupants of the Development and the wider community such as tools for information sharing, additional signage, circulation of leaflets;
- Funding of the monitoring of compliance with the obligations of this Deed by the District Council or County Council

SCHEDULE 7

Bespoke Noise Insulation Scheme

1. In this Schedule the following words shall have the following meanings:

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| "Absolute Criteria" | means all of the following, when measured 1m from the external façade of any Eligible Room: (a) noise levels from the Operational Development exceed façade noise levels of 66dB $L_{Aeq,16hrs}$ during the hours of 07:00 to |
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| | <p>23:00 or 62dB $L_{Aeq,8hrs}$ during the hours of 23:00 to 07:00;and</p> <p>(b) noise levels from the Operational Development increase Baseline Ambient Sound Levels by at least 1dB as a result of the Operational Development; and</p> <p>(c) the contribution from the Operational Development to the overall noise level at the façade is at least 1dB .</p> |
| "Actual Noise Insulation Works" | <p>means the noise insulation and ventilation works to the Eligible Property (Construction) or Eligible Property (Operation) established as being required to meet the Noise Objective (Construction) or Noise Objective (Operation) respectively following internal inspection.</p> |
| "Approved Document F" | <p>Document approved by the Secretary of State to provide practical guidance on ways of complying with the requirements in Part F of Schedule 1 to, and regulations 39, 42 and 44 (in so far as it relates to fixed systems for mechanical ventilation) of, the Building Regulations 2010 (SI 2010/2214) for England and Wales, and regulations 20(1) and 20(6) (in so far as it relates to fixed systems for mechanical ventilation) of the Building (Approved Inspectors etc) Regulations 2010 (SI 2010/2215) for England and Wales.</p> |
| "Assessment Window" | <p>means</p> <p>(1) within a period commencing at least six months prior to the anticipated date of Occupation of the first Warehouse to be Occupied and ending on the date of Occupation of the first Warehouse to be Occupied;</p> <p>(2) within a period commencing at least six months prior to the anticipated date of Occupation of more than 185,800 sq.m of Warehousing and ending on the date of</p> |

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| | <p>Occupation of more than 185,800 sq.m of Warehousing;</p> <p>(3) within a period commencing at least six months prior to the anticipated date of Occupation of more than 464,500 sq.m of Warehousing and ending on the date of Occupation of more than 464,500 sq.m of Warehousing; and</p> <p>(4) within a period commencing at least six months prior to the anticipated date of Occupation of the last Warehouse to be Occupied and ending on the date of Occupation of the last Warehouse to be Occupied.</p> |
| "Background Sound Level" | means the A-weighted sound pressure level that is exceeded by the residual sound at the assessment location for 90% of a given time interval, T, measured using fast time weighting. |
| "Baseline Ambient Sound Level" | means the equivalent continuous A-weighted sound pressure level of the totally encompassing sound in a given situation at a given time, usually from many sources near and far, at a location over a given time interval, T. |
| "Baseline Conditions" | means the Baseline Ambient Sound Level (measured in terms of the LAeq index) and Background Sound Level (measured in terms of the LA90 index) prevailing in the locale of the Authorised Development prior to the Commencement of the Development |
| "Bespoke Construction NIA" | means an assessment of the impact of noise predicted to occur as a result of the construction of the relevant phase of the Authorised Development and undertaken using the Relevant Methodology which identifies the Eligible Properties (Construction) in respect of the construction of that phase. |

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| “Bespoke Operation NIA” | means an assessment of the impact of noise as a result of the Operational Development measured during the relevant Assessment Window and undertaken using the Relevant Methodology which identifies the Eligible Properties (Operation) at that time. |
| “Eligible Property (Construction)” | <p>means a residential dwelling or other building used for residential purposes which meets all of the following criteria (i) to (v) :</p> <p>(i) is located within 300 metres of any boundary of the phase to which the Bespoke (Construction) NIA identifying the property relates;</p> <p>(ii) is not the subject of an agreement to purchase entered into between the Interested Person(s) in relation to that property and the Applicant unless such property remains in residential use following the commencement of construction on the relevant phase;</p> <p>(iii) satisfies the Qualifying (Construction) Criteria</p> <p>(iv) has not been previously identified as an Eligible Property (Construction) as a result of a Bespoke Construction NIA carried out in relation to a preceding phase; and</p> <p>(v) has one or more elevations of an Eligible Room which are relevant to the identification of the dwelling as an Eligible Property (Operation) in the relevant Bespoke Operational NIA which do not have effective double glazing sufficient to meet the Noise Objective (Construction) or effective ventilation to enable the provisions of Approved Document F to be achieved</p> |
| “Eligible Property (Operation)” | means a residential dwelling or other building used for residential purposes which meets all of the following criteria (i) to (v) : |

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| | <p>(i) is located within 300 metres of any part of an Operational Area;</p> <p>(ii) is not the subject of an agreement to purchase entered into between the Interested Person(s) in relation to that property and the Applicant unless such property remains in residential use following the Occupation of the First Warehouse to be Occupied;</p> <p>(iii) satisfies one or more of the Qualifying (Operational) Criteria;</p> <p>(iv) has not been previously identified as an Eligible Property (Operation) as a result of a Bespoke Operation NIA carried out in relation to a preceding Assessment Window; and</p> <p>(v) has one or more elevations of an Eligible Room which are relevant to the identification of the dwelling as an Eligible Property (Operation) in the relevant Bespoke Operation NIA which do not have effective double glazing sufficient to meet the Noise Objective (Operation) or effective ventilation to enable the provisions of Approved Document F to be achieved</p> |
| <p>"Eligible Room"</p> | <p>means a living room or a bedroom in an Eligible Property (Operation) or Eligible Property (Construction).</p> |
| <p>"Interested Person"</p> | <p>means the owners and occupiers of any Eligible Property (Construction) or Eligible Property (Operation) as the case may be</p> |
| <p>"Internal Criteria"</p> | <p>means sound levels from the Operational Development excEEd 40dB $L_{Aeq,16hrs}$ during the hours of 07:00 to 23:00 Or 35dB $L_{Aeq,8hrs}$ during the hours of 23:00 to 07:00 as measured within any eligible room, with measurements undertaken in accordance with the Association of Noise Consultants' <i>Guidelines – Noise Measurement in Buildings</i>.</p> |

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| "Listed Building" | means a building included in the List of Buildings of Special Architectural or Historic Interest compiled by the Department of Digital, Culture, Media and Sports pursuant to the Planning (Listed Buildings and Conservation Areas) Act 1990 |
| "Listed Building Consent" | means a consent for works to be carried out to a Listed Building required under the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 |
| "Noise Insulation Offer" | means details of the Provisional Noise Insulation Works appropriate for each Eligible Property (Construction) or Eligible Property (Operation) as the case may be |
| "Noise Insulation Payment" | means the payment to the Interested Person of a sum equivalent to the cost of the carrying out of the Actual Noise Insulation Works at their property subject to a maximum of Nine Thousand Pounds (£9,000) per Eligible Property (Construction) or Eligible Property (Operation) as the case may be and in the case of a Listed Building also the cost of obtaining any Listed Building Consent required for the works concerned |
| "Noise Objective (Construction)" | means in respect of each Eligible Property (Construction) providing sound insulation to Eligible Rooms |
| "Noise Objective (Operation)" | means in respect of each Eligible Property (Operation) providing sound insulation to Eligible Rooms so that the internal sound levels meet the Internal Criteria when the Authorised Development is operating. |
| "Operational Area" | means any part of the Order Limits comprising: (1) the demise of an Occupied Warehouse; (2) land upon which the operational Rail Terminal and associated rail infrastructure is situated; and |

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| | (3) road infrastructure which is open to public traffic |
| “Operational Development” | means the use of the Authorised Development for purposes authorised by the DCO but excluding all construction activities |
| “Phase” | means a phase of the Authorised development identified in the Phasing plan |
| “Phasing Plan” | means the phasing plan approved by the Council under requirement 2 of the draft DCO or the equivalent requirement in the form of DCO made by the Secretary of State |
| “Provisional Noise Insulation Offer” | means in respect of each Eligible Property (Construction) and Eligible Property (Operation) as the case may be an offer setting out the Provisional Noise Insulation Works and the estimated cost of those works and offering to make the Noise Insulation Payment once the Actual Noise Insulation Works have been established following internal inspection of the Eligible Property (Construction) or Eligible Property (Operation) as the case may be |
| “Provisional Noise Insulation Works” | means the noise insulation and ventilation works to the Eligible Property (Construction) and Eligible Property (Operation) as the case may be provisionally thought to be required to meet the Noise Objective (Construction) or Noise Objective (Operation) without the benefit of internal inspection |
| “Relative Criteria” | means where the rating level at a position representative of an Eligible Room, including appropriate character corrections, exceeds the background sound level By 10dB or more and “Rating Level”, “Character Corrections” and “Background Sound Levels” shall have the meanings assigned to them in British Standard 4142: 2014 and all measurements/calculations shall accord with the standard. |

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| <p>“Relevant Methodology”</p> | <p>means</p> <p>(1) in respect of assessing compliance with the Qualifying Criteria (Operation) a methodology estimating the noise impact of the whole of the Operational Development carried out in accordance with the provisions in Annex 1 and</p> <p>(a) in the case of the Absolute Criteria means a suitable calculation method to determine the external sound levels at 1m from the façade of an Eligible Room.</p> <p>(b) in the case of the Relative Criteria means at a position representative of an Eligible Room a comparison of rating level due to the authorised development against background sound level as set out in BS4142:2014; and</p> <p>(c) in the case of the Internal Criteria means a suitable calculation method to determine the external sound levels at 1m from the façade of an Eligible Room, corrected by -13dB to obtain the internal sound level with an open window.</p> <p>(2) in respect of assessing the impact of construction noise means a methodology following the guidance contained in British Standard 5228:Part1:2009+A1:2014</p> |
| <p>Qualifying Criteria (Construction)</p> | <p>means a property which</p> <p>(1) is predicted to experience a construction noise level which exceeds either</p> <p>(a) the noise insulation trigger levels set out in Annex 2 for the corresponding times of the day; or</p> <p>(b) the existing Baseline Ambient Sound Level for the corresponding times of the day;</p> <p>whichever is the higher.</p> <p>and</p> |

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| | (2) any exceedance of (1) is predicted to last for a period of 10 or more days of working in any 15 consecutive days or for a total number of days exceeding 40 in any 6 consecutive months |
| “Qualifying Criteria” (Operation) | means the Absolute Criteria, the Relative Criteria and the Internal Criteria |

Initial Measurement

- 4. Prior to the commencement of the first Assessment Window the Applicant will undertake a re-measurement of Baseline Conditions in accordance with a scheme first agreed with the Council and provide details of the same to the Council unless the Council confirms to the Applicant that no such re-measurement is required and a pre-existing survey of baseline Conditions can instead be relied upon for the purposes of applying the provisions of this Schedule

Construction Impact

- 5. The provisions of paragraphs 3.1 to 3.12 shall apply in respect of the provision of noise insulation to properties experiencing noise impacts from the construction of the Authorised Development:
 - 5.1 prior to the commencement of construction on each Phase of the Authorised Development the Applicants shall submit a Bespoke Construction NIA for that Phase to the Council.
 - 5.2 the Council will within 28 days of receipt of each Bespoke Construction NIA respond to the Applicant, either confirming that the Bespoke Construction NIA in question is acceptable or identifying any deficiencies.
 - 5.3 the process referred to in paragraphs 3.1 and 3.2 above will be repeated until a Bespoke Construction NIA for the relevant Phase has been agreed between the Applicant and the Council or has been determined in accordance with an expert’s determination pursuant to paragraph 6.
 - 5.4 following each Bespoke Construction NIA being agreed (either by agreement or by expert determination) the process set out in the following paragraphs 3.5. to 3.12. will apply.
 - 5.5 within 28 days of the agreement of each Bespoke Construction NIA the Applicant will submit a Provisional Noise Insulation Offer for each Eligible Property

(Construction) identified in the Bespoke Construction NIA to the Council for approval.

- 5.6 the Council will within 28 days of receipt of each Provisional Noise Insulation Offer respond to the Applicant, either confirming that the Provisional Noise Insulation Offer in question is acceptable or identifying any deficiencies.
- 5.7 the process referred to in paragraphs 3.5 and 3.6. above will be repeated until the Provisional Noise Insulation Offer for the Eligible Property (Construction) has been agreed between the Applicant and the Council or has been determined in accordance with an expert's determination pursuant to paragraph 6.
- 5.8 Within 14 days of the Provisional Noise Insulation Offer in respect of an Eligible Property (Construction) being agreed pursuant to paragraph 3.7 the Applicant will notify the Interested Person of the Provisional Noise Insulation Offer in respect of its Eligible Property (Construction) which offer shall:
- (a) be in the form agreed pursuant to paragraph 3.7 and sent by [guaranteed delivery] to the Interested Person enclosing a pre-paid envelope for reply with a copy sent to the Council; and
 - (b) be conditional upon the Applicant, on giving reasonable notice, being afforded such access to the Eligible Property (Construction) concerned as it may reasonably require in order to identify the Actual Noise Insulation Works and therefore also the Noise Insulation Payment; and
 - (c) require the Interested Person if it wishes to proceed to respond to the Applicant within 28 days of the date of the offer stating it wishes to proceed and advising of the best contact details and arrangements for securing access to the Eligible Property (Construction) concerned for the purpose of inspection to identify the Actual Noise Insulation Works and thus the Noise Insulation Payment
- 5.9 If no response from the Interested Person is received by the Applicant to the offer within the 28 day period referred to in paragraph 3.8 (c) then the offer will be deemed to have been rejected and there shall be no continuing obligation on the Applicant in respect of that Eligible Property (Construction)
- 5.10 If the Interested Person responds to the Applicant in writing within the 28 day period referred to in paragraph 3.8 (c) stating it wishes to accept the offer then:
- (a) the Applicant shall make arrangements to visit the premises to identify the Actual Noise Insulation Works and

Noise Insulation Payment as soon as reasonably practicable; and

- (b) within 28 days of carrying out that visit the Applicant must notify the Interested Person of the Actual Noise Insulation Works and offer to pay the Noise Insulation Payment to the Interested Person

5.11 If the Interested Person wishes to receive the Noise Insulation Payment then it must notify the Applicant of its wish to do so within 28 days of receipt of the offer pursuant to paragraph 3.10(b) and the notification must include confirmation in writing that the Interested Person;

- (a) accepts the offer from the Applicant to pay the Noise Insulation Payment to the Interested Person;
- (b) undertakes to the Applicant to use the Noise Insulation Payment for the carrying out of the Actual Noise Insulation Works and for no other purpose and to complete the works within six months of receipt of the Noise Insulation Payment;
- (c) commits to notifying the Applicant and the Council within 14 days of completion of the works and facilitate an inspection on behalf of those parties to confirm that the works have been carried out; and
- (d) commits to repay the Noise Insulation Payment to the Applicant in the event that the Actual Noise Insulation Works have not been completed within six months of receipt of the Noise Insulation Payment subject to any extension agreed between the Interested Person and the Applicant

5.12 Upon the Noise Insulation Payment being made by the Applicant to the Interested Person or upon the expiry of the 28 day period referred to in paragraph 3.11 without the Applicant being notified by the Interested Person that it wishes to accept the offer of the Noise Insulation Payment in the terms set out in paragraph 3.11 all obligations on the Applicant under this Schedule in respect of the Eligible Property (Construction) concerned shall cease

6. No construction shall be commenced on any Phase until all Eligible Properties identified in respect of that Phase have completed the procedures set out in paragraphs 3.2 to 3.10 above unless otherwise agreed by the Council

Operational Impact

7. The provisions of paragraphs 5.1 to 5.12 shall apply in respect of the provision of noise insulation to properties experiencing noise impacts from the Operational Development:
 - 7.1 prior to the end of each Assessment Window the Applicant will submit a Bespoke Operation NIA to the Council.
 - 7.2 the Council will within 28 days of receipt of each Bespoke Operation NIA respond to the Applicant, either confirming that the Bespoke Operation NIA in question is acceptable or identifying any deficiencies.
 - 7.3 the process referred to in paragraphs 5.1 and 5.2 above will be repeated until a Bespoke Operation NIA for the relevant Assessment Window has been agreed between the Applicant and the Council or has been determined in accordance with an expert's determination pursuant to paragraph 6.
 - 7.4 following each Bespoke Operation NIA being agreed (either by agreement or by expert determination) the process set out in the following paragraphs 5.5 to 5.7 will apply.
 - 7.5 within 28 days of the agreement of each Bespoke Operation NIA the Applicant will submit a Provisional Noise Insulation Offer for each Eligible Property (Operation) identified in the Bespoke Operation NIA to the Council for approval.
 - 7.6 the Council will within 28 days of receipt of each Provisional Noise Insulation Offer respond to the Applicant, either confirming that the Provisional Noise Insulation Offer in question is acceptable or identifying any deficiencies.
 - 7.7 the process referred to in paragraphs 5.5 and 5.6 above will be repeated until the Provisional Noise Insulation Offer for the Eligible Property (Operation) has been agreed between the Applicant and the Council or has been determined in accordance with an expert's determination pursuant to paragraph 6.
 - 7.8 within 28 days of the Provisional Noise Insulation Offer in respect of an Eligible Property (Operation) being agreed pursuant to paragraph 5.7 the Applicant will notify the Interested Person of the Provisional Noise Insulation Offer in respect of its Eligible Property (Operation) which offer shall:
 - (a) be in the form agreed pursuant to paragraph 5.7 and sent by [guaranteed delivery] to the Interested Person enclosing a pre-paid envelope for reply with a copy sent to the Council; and
 - (b) be conditional upon the Applicant, on giving reasonable notice, being afforded such access to the Eligible Property

(Operation) concerned as it may reasonably require in order to identify the Actual Noise Insulation Works and therefore also the Noise Insulation Payment; and

- (c) require the Interested Person if it wishes to proceed to respond to the Applicant within 28 days of the date of the offer stating it wishes to proceed and advising of the best contact details and arrangements for securing access to the Eligible Property (Operation) concerned for the purpose of inspection to identify the Actual Noise Insulation Works and thus the Noise Insulation Payment

7.9 if no response from the Interested Person is received by the Applicant to the offer within the 28 day period referred to in paragraph 5.8(c) then the offer will be deemed to have been rejected and there shall be no continuing obligation on the Applicant in respect of that Eligible Property (Operation)

7.10 if the Interested Person responds to the Applicant in writing within the 28 day period referred to in paragraph 5.8(c) stating it wishes to accept the offer then

- (a) the Applicant shall make arrangements to visit the premises to identify the Actual Noise Insulation Works and Noise Insulation Payment as soon as reasonably practicable; and
- (b) within 28 days of carrying out that visit the Applicant must notify the Interested Person of the Actual Noise Insulation Works and offer to pay the Noise Insulation Payment to the Interested Person

7.11 if the Interested Person wishes to receive the Noise Insulation Payment then it must notify the Applicant of its wish to do so within 28 days of receipt of the offer pursuant to paragraph 5.10(b) and the notification must include confirmation in writing that the Interested Person;

- (a) accepts the offer from the Applicant to pay the Noise Insulation Payment to the Interested Person;
- (b) undertakes to the Applicant to use the Noise Insulation Payment for the carrying out of the Actual Noise Insulation Works and for no other purpose and to complete the works within six months of receipt of the Noise Insulation Payment;
- (c) commits to notifying the Applicant and the Council within 14 days of completion of the works and facilitate an

inspection on behalf of those parties to confirm that the works have been carried out; and

- (d) commits to repay the Noise Insulation Payment to the Applicant in the event that the Actual Noise Insulation Works have not been completed within six months of receipt of the Noise Insulation Payment subject to any extension agreed between the Interested Person and the Applicant

7.12 Upon the Noise Insulation Payment being made by the Applicant to the Interested Person or upon the expiry of the 28 day period referred to in paragraph 5.11 without the Applicant being notified by the Interested Person that it wishes to accept the offer of the Noise Insulation Payment in the terms set out in paragraph 5.11 all obligations on the Applicant under this Schedule in respect of the Eligible Property (Operation) concerned shall cease

Expert Determination

- 8.1 Any difference under this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.
- 8.2 All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.
- 8.3 The expert must—
 - (i) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
 - (ii) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
 - (iii) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
 - (iv) give reasons for the decision.
- 8.4 Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 49.
- 8.5 The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

Annex 1: Details of Bespoke NIA Methodology

For the avoidance of doubt, the Bespoke NIA shall in respect of the Relative Criteria, shall follow the guidance contained in British Standard 4142: 2014.

It shall be acceptable to establish the background sound level for a property using a proxy location, providing that the use of that location is justified.

For the Relative Criteria, the method of determining the representative background sound level should be stated and justified.

For the Relative Criteria, the quantum of character corrections applied to the specific sound levels to obtain the rating levels should be stated and justified.

All measurement/assessment locations for the Relative Criteria shall accord with the guidance set out in British Standard 4142: 2014.

The calculation of sound levels shall follow a recognised calculation methodology, such as that set out in ISO 9613: Part 2: 1996.

Annex 2: Construction Phase

Assessment of construction noise levels to follow the guidance set out in British Standard 5228: Part 1: 2009+A1: 2014.

Construction Noise Trigger Values

| Day | Time | Averaging Period, T | Noise Insulation Trigger Value dB LAeq,T |
|----------------------------|----------------|---------------------|--|
| Monday to Friday | 07:00 to 08:00 | 1 hr | 70 |
| | 08:00 to 18:00 | 10 hr | 75 |
| | 18:00 to 19:00 | 1 hr | 70 |
| | 19:00 to 22:00 | 3 hr | 65 |
| | 22:00 to 07:00 | 1 hr | 55 |
| Saturday | 07:00 to 08:00 | 1 hr | 70 |
| | 08:00 to 13:00 | 5 hr | 75 |
| | 13:00 to 14:00 | 1 hr | 70 |
| | 14:00 to 22:00 | 1 hr | 65 |
| | 22:00 to 07:00 | 1 hr | 55 |
| Sunday and Public Holidays | 07:00 to 21:00 | 1 hr | 65 |
| | 21:00 to 07:00 | 1 hr | 55 |

SCHEDULE 8

RAIL TERMINAL PREPARATORY WORKS

- a. Updating of site surveys (ground conditions and archaeology) for areas affected by terminal and other rail infrastructure.
- b. Additional ground investigations for terminal area to complete the application for the variation of the environmental permit relating to groundwater remediation
- c. Application for and securing varied environmental permit in accordance with the Remediation Strategy submitted with the application for the DCO

- d. Approval of details as required under Schedule 2 of the DCO
- e. Earthmoving to create plateau and provision of access.
- f. Network Rail GRIP stages 3, 4 and 5 to be done to get to the detailed design stage for construction. Each of these GRIP stages can take on average 6 - 12 months but it would be hoped that some of the GRIP stages could be combined.
- g. Rail possessions will need to be booked to carry out the physical works on the rail line such as the connection points at the north and south of the WMI site and the signalling interface changes.
- h. The carrying out of provision of the physical works to the rail network including new rail line for the sidings as well as new turnouts and crossing.
- i. The construction contract for all the rail infrastructure to be tendered.
- j. The access road for the rail terminal connecting the site to the A449 and A5 to be completed.
- k.
- l. On physical completion of the rail terminal further GRIP sign off stages needed to enable a fully commissioned rail terminal.

Note: The works itemised in a) to (l) above are not all sequential and some may run in parallel

SCHEDULE 9

Site Wide Travel Plan

DRAFT

SCHEDULE 10

Site Wide HGV Management Plan

DRAFT

SCHEDULE 11

EMPLOYMENT SKILLS AND TRAINING PLAN FRAMEWORK

DRAFT

This Agreement is executed as a DEED and delivered on the date stated at the beginning of this document.

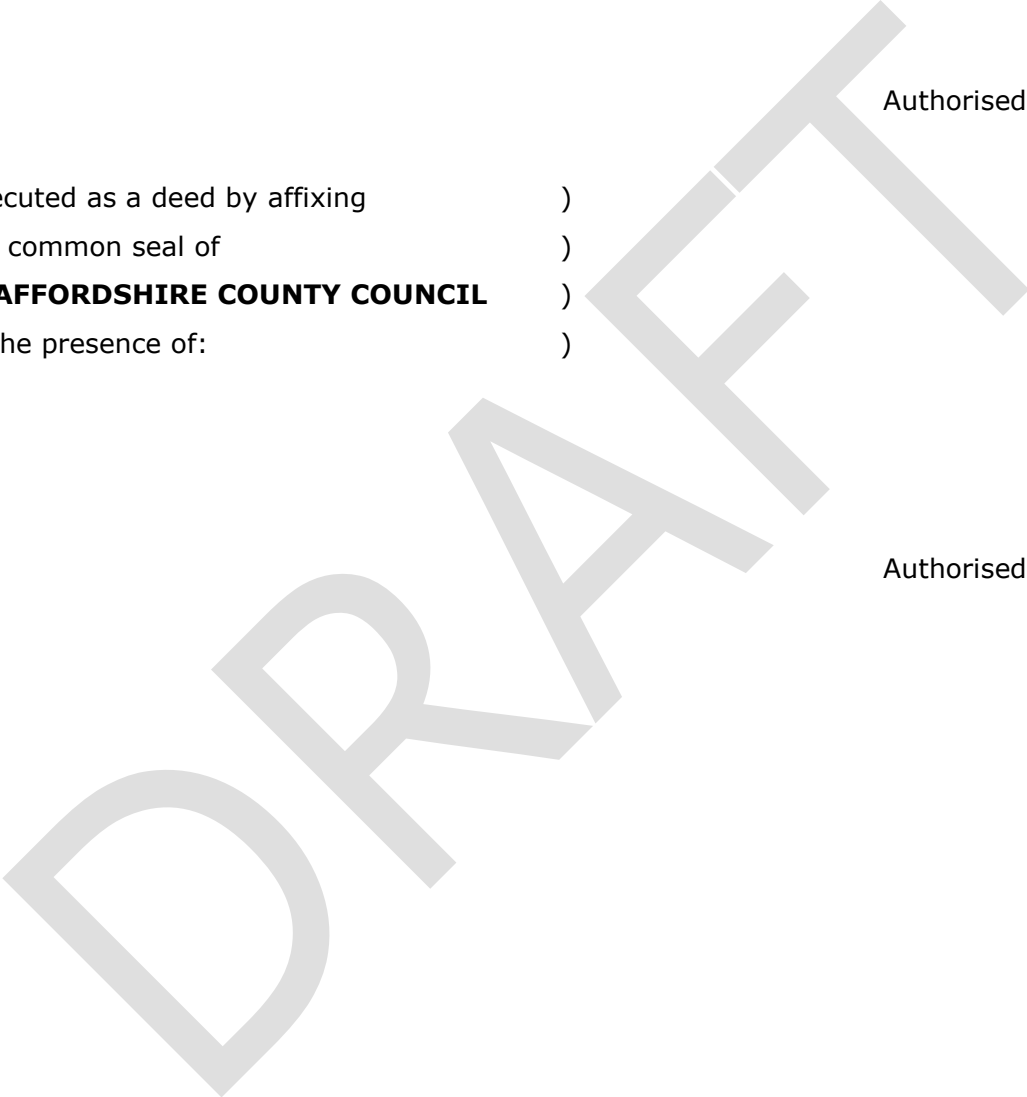
DRAFT

Executed as a deed by affixing)
the common seal of)
SOUTH STAFFORDSHIRE DISTRICT COUNCIL)
in the presence of:)

Executed as a deed by affixing)
the common seal of)
STAFFORDSHIRE COUNTY COUNCIL)
in the presence of:)

Authorised Signatory

Authorised Signatory



Signed as a deed by)
PIERS ALASTAIR CARLOS MONCKTON)
in the presence of

Witness signature

Witness name

Witness address

Witness occupation

Signed as a deed by)
FOUR ASHES LIMITED)
acting by two directors or)
one director and its secretary)

Signature of director

Signature of director/secretary